

# HOUSE BILL No. 1252

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-28.

**Synopsis:** Liens for unpaid or unsatisfied fringe benefits. Provides that a mechanic's lien and a lien on a strip mine may be recorded for unpaid or unsatisfied fringe benefits and withholdings.

**Effective:** July 1, 2005.

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January 6, 2005, read first time and referred to Committee on Employment and Labor.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1252

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-28-3-0.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 0.5. As used in this chapter, "fringe benefits and**  
4 **withholdings" means compensation due an employee under a**  
5 **written contract or written policy in addition to wages, including:**

6 (1) **holiday pay;**

7 (2) **time off for:**

8 (A) **sickness or injury; or**

9 (B) **personal reasons or vacation;**

10 (3) **bonus pay;**

11 (4) **authorized expenses incurred during the course of**  
12 **employment; and**

13 (5) **contributions due to or made on behalf of an employee.**

14 SECTION 2. IC 32-28-3-1 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A contractor, a  
16 subcontractor, a mechanic, a lessor leasing construction and other  
17 equipment and tools, whether or not an operator is also provided by the

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lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

(1) the erection, alteration, repair, or removal of:

(A) a house, mill, manufactory, or other building; or

(B) a bridge, reservoir, system of waterworks, or other structure;

(2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or

(3) any other earth moving operation;

may have a lien as set forth in this section.

(b) A person described in subsection (a) may have a lien separately or jointly upon the:

(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages, **including unpaid or unsatisfied fringe benefits and withholdings**, of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation

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described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract:

(1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) for the construction, alteration, or repair of property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2);

(iv) rural electric membership corporation formed under IC 8-1-13-4;

(v) rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure, or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

(1) be in writing;

(2) contain specific reference by legal description of the real estate to be improved;

(3) be acknowledged as provided in the case of deeds; and

(4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied

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before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

(1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;

(2) index the contract in the name of the:

(A) contractor; and

(B) owner;

in books kept for that purpose; and

(3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

(1) a contractor, subcontractor, mechanic; or

(2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the

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county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 3. IC 32-28-10-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. As used in this chapter, "fringe benefits and withholdings" means compensation due an employee under a written contract or written policy in addition to wages, including:**

(1) holiday pay;

(2) time off for:

(A) sickness or injury; or

(B) personal reasons or vacation;

(3) bonus pay;

(4) authorized expenses incurred during the course of employment; and

(5) contributions due to or made on behalf of an employee.

SECTION 4. IC 32-28-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a) A person employed and working in and about a strip mine has a lien on:**

(1) the strip mine;

(2) all machinery and fixtures connected with the strip mine; and

(3) everything used in and about the strip mine;

for **compensation for labor, including unpaid or unsatisfied fringe benefits and withholdings**, performed within a two (2) month period preceding the lien. Except as provided in subdivision (b), this lien is superior to and has priority over all other liens. As against each other, these liens have priority in the order in which they accrued.

(b) A state tax lien is superior to and has priority over a lien described in subsection (a).

(c) A person desiring to acquire an employee lien as described in subsection (a) shall file within sixty (60) days after the time the payment became due in the recorder's office of the county where the mine is situated a notice of intention to hold a lien upon property for

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1 the amount of the claim. The person filing a lien shall state in the lien  
2 notice the amount of the claim and the name of the coal works, if  
3 known. If the person filing the lien does not know the name of the coal  
4 works, the person shall include in the notice any other designation  
5 describing the location of the mine. The recorder shall immediately  
6 record the notice in the location used for recording mechanic's liens.  
7 The recorder shall receive a fee in accordance with IC 36-2-7-10. If the  
8 mine is located in more than one (1) county, the notice of intention to  
9 hold a lien may be filed in any county where any part of the mine is  
10 located.

11 (d) Suits brought to enforce a lien created under this section must be  
12 brought within one (1) year after the date of filing notice of the lien in  
13 the recorder's office. All judgments rendered on the foreclosure of the  
14 liens must include:

- 15 (1) the amount of the claim found to be due;  
16 (2) the interest on the claim from the time due; and  
17 (3) reasonable attorney's fees.

18 The judgment shall be collected without relief from valuation,  
19 appraisalment, or state laws.

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